

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE, )  
Plaintiff, ) No. 2:07-cv-00269-JPD  
v. ) CONSENT DECREE  
YOUNG CORPORATION, dba )  
Meltec Division, )  
Defendant. )  
\_\_\_\_\_ )

WHEREAS, Plaintiff Puget Soundkeeper Alliance, on February 20, 2007, filed a  
Complaint against Defendant Young Corporation, dba Meltec Division, alleging violations of the  
Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater associated with  
industrial activities from Defendant's industrial facility located in Seattle in King County,  
Washington, seeking declaratory and injunctive relief, civil penalties, attorneys fees, and costs;

and

WHEREAS, Defendant denies Plaintiff's claims and any liability for many of the alleged  
violations; and

CONSENT DECREE - 1

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Seattle, Washington 98122-0091  
(206) 420-1590

1 WHEREAS, counsel for the parties to this action have engaged in discussions relating to  
2 the potential settlement of this litigation, which discussions have included an assessment of the  
3 facts surrounding the alleged violations; and

4 WHEREAS, Defendant has undertaken, and is implementing, measures to ensure  
5 compliance with the Clean Water Act at its facility; and

6 WHEREAS, Plaintiff and Defendant agree that compromise and settlement of these  
7 matters is in the best interest of the parties and the public, and that entry of this Consent Decree  
8 without additional litigation is the most appropriate means of resolving this action; and

9 WHEREAS, Plaintiff and Defendant, by their authorized counsel and without trial or final  
10 adjudication of any issue of law or fact respecting Plaintiff's claims and allegations, consent to the  
11 entry of this Decree in order to avoid the risks of litigation and to resolve the controversy  
12 between them;

13 NOW THEREFORE, without trial of any issue of fact or law, and without admission by  
14 the Defendant of the facts or violations alleged in the Complaint, and upon consent of the parties,  
15 and upon consideration of the mutual promises herein contained, it is hereby

16 ORDERED, ADJUDGED AND DECREED as follows:

17 1. This Court has jurisdiction over the parties and subject matter of this action;  
18 2. The undersigned representative for each party certifies that he/she is fully  
19 authorized by the party he represents to enter into the terms and conditions of this Decree and to  
20 legally bind the party and the successors in interest to it by signing this Consent Decree.

21 3. This Decree shall apply to and be binding upon the parties, and upon the  
22 successors and assigns of the parties.  
23

24 CONSENT DECREE - 2

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1           4. This Decree shall apply to Defendant's operation of its industrial metal foundry  
2 facility located at 3444 13<sup>th</sup> Avenue Southwest on Harbor Island in Seattle, Washington.

3           5. This Decree constitutes a full and complete settlement of the claims alleged in the  
4 Complaint in this case and all other claims known and unknown existing as of the date of filing of  
5 this Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising  
6 from the operation of the facility identified in paragraph 4 of this Decree.

7           6. This Decree shall not constitute evidence in any proceeding, an admission or  
8 adjudication with respect to any allegation of the Complaint, any fact or conclusion of law with  
9 respect to any matter alleged in or arising out of the Complaint, or admissions or evidence of any  
10 wrongdoing or misconduct on the part of the Defendant or its successor(s).

11           7. In full and complete satisfaction of the claims covered by the Complaint filed in  
12 this case and all other claims covered by this Decree, as described in Paragraph 5, Defendant  
13 agrees to abide by and be subject to the following terms and conditions:

14           a. During the effectiveness of this Consent Decree, Defendant shall comply with all  
15 conditions of its NPDES Permit No. S03-000639D, or any modified or reissued permit applicable  
16 to Defendant's industrial facility. This compliance commitment includes full compliance with the  
17 Permit's inspection, evaluation, discharge monitoring, reporting, and record-keeping  
18 requirements, as well as the full implementation of a facility SWPPP including all necessary Best  
19 Management Practices (BMPs).

20           b. Through December 31, 2008, Defendant shall send to Plaintiff copies of all  
21 quarterly DMRs, SWPPP revisions or updates, and any necessary Level One, Two, and Three  
22 Reports required by the Permit, within thirty (30) days of providing said documents to the

1 Washington Department of Ecology. Defendant shall also send to Plaintiff a copy of the  
2 Operation and Maintenance Plan(s) for each of its baghouses.

3 c. Within thirty (30) days of the entry of this Decree, Defendant shall update its  
4 facility Stormwater Pollution Prevention Plan (SWPPP) (March 2007) as described in Exhibit 1,  
5 "SWPPP Revisions" which is attached to this Consent Decree.  
6

7 d. Not later than ten days after the date of entry of this Decree, Defendant shall  
8 contribute a total of thirty thousand dollars (\$30,000.00) to the independent and mutually  
9 agreeable third party environmental organizations identified below. Such contribution shall be  
10 used to fund the following environmental mitigation projects related to water quality improvement  
11 in the Duwamish River basin or in Puget Sound, in the amounts stated:  
12

- 13 • \$20,000 to the Duwamish Tribe to fund the Duwamish Longhouse and Cultural  
14 Center Rain Garden Demonstration Project; and  
15
- 16 • \$10,000 to the Environmental Coalition of South Seattle (ECOSS) to fund the  
17 South Park Spill Kit Incentive Program.  
18

Such contribution shall be evidenced and confirmed in writing, with a copy mailed to Plaintiff.  
19

20 e. Within ten days of the entry of this Decree, Defendant shall pay Plaintiff's  
21 reasonable attorney fees and costs in the amount of twenty thousand dollars (\$20,000.00) by  
22 check payable and mailed to SCOPE Law Firm, PLLC, PO Box 22091, Seattle, WA 98122-  
23 0091, attn: Richard A. Poulin, in full and complete satisfaction of any claims Plaintiff may have  
24 under the Clean Water Act for fees and costs.  
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26 8. The Court shall retain jurisdiction over this matter and allow this case to be  
27 reopened without filing fee for the purpose of enabling the parties to this Decree to apply to the  
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Court for any further Order that may be necessary to construe, carry out, enforce compliance with and/or resolve any dispute regarding the terms or conditions of this Decree. In the event of any dispute regarding implementation of or compliance with the Decree, the parties shall first attempt to informally resolve the dispute through meetings between the parties. Any party may initiate dispute resolution by serving written notice of a request for dispute resolution. If no resolution is reached within fourteen (14) days from the date that notice of the dispute is served, the parties may resolve the dispute by filing motions with the Court. In the event a motion is made in this Court to enforce the terms of this Decree, the prevailing party shall be entitled to its reasonable costs of litigation related to enforcement of the decree, including reasonable attorney and expert witness fees, so long as an award of such costs of litigation does not result in manifest injustice. Plaintiff and Defendant reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree and all applicable law in the future.

9. The parties recognize that no consent judgment can be entered in a Clean Water Act suit in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. EPA pursuant to 33 U.S.C. § 1365(c)(3). Therefore, upon the signing of this Consent Decree by the parties, Plaintiff shall serve copies of it upon the Administration of the U.S. EPA and the Attorney General.

10. This Consent Decree shall take effect on the date it is entered by the Court. This Consent Decree shall terminate on December 31, 2009, or upon completion of all obligations under it, whichever is later.

1       11. The following individuals shall be responsible for and shall be the contact for all  
2 communications and notices regarding this Consent Decree:

3       For plaintiff, Puget Soundkeeper Alliance:

4           Sue Joerger  
5           Puget Soundkeeper Alliance  
6           5309 Shilshole Avenue NW, Suite 215  
7           Seattle, WA 98107  
8           (206) 297-7002  
9           (206) 297-0409 - fax

10       For defendant, Young Corporation, dba Meltec Division:

11           Keith A. Kemper  
12           Ellis, Li & McKinstry PLLC  
13           Two Union Square  
14           601 Union Street, Suite 4900  
15           Seattle, WA 98101-3906

16       12. This Consent Decree may be modified only upon the written consent of the parties  
17 and the approval of the Court.

18       13. If for any reason the Court should decline to approve this Decree in the form  
19 presented, this Decree and the settlement embodied herein shall be voidable at the sole discretion  
20 of either party. The parties agree to continue negotiations in good faith in an attempt to cure any  
21 objection raised by the Court to entry of this Decree.

1  
2 Dated and entered this 4th day of January, 2008.  
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4

5   
6 JAMES P. DONOHUE  
7 United States Magistrate Judge

8 PUGET SOUNDKEEPER ALLIANCE  
9

10 Signature: s/ Sue Joerger

11 Title: Executive Director

12 Dated: 10/24/07

13  
14 YOUNG CORPORATION, dba Meltec Division  
15

16 Signature: s/ Keith A. Kemper

17 Title: Attorney in Fact

18 Dated: Oct. 22, 2007

19 CONSENT DECREE - 7  
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CONSENT DECREE EXHIBIT 1

1. In SWPPP Section 4.4, "Drainage Areas Associated With Industrial Activities," Defendant shall revise the paragraph describing the drainage to catch basins #3 and #4 by deleting the second sentence and adding three new sentences stating, "A baghouse is located adjacent to the southern wall of the foundry building. Scrap metals are stored in open bins along the building in this area. The primary potential pollutants in this area include metals and baghouse dust."

2. In SWPPP Section 4.4, "Drainage Areas Associated With Industrial Activities," Defendant shall revise the paragraph describing the drainage to catch basins #1 and #2 by replacing the second sentence with a new sentence stating, "Additionally, scrap metals are stored in open bins in the areas that drain to catch basins #1 and #2."

3. In SWPPP Section 4.4, "Drainage Areas Associated With Industrial Activities," Defendant shall add a new paragraph accurately describing the industrial activities occurring in the drainage to catch basin #7.

4. In SWPPP Section 5.1, “Operational BMPs,” Defendant shall revise Table 5-2, “Best Management Practices” to include a “Preventative Maintenance” BMP for bag houses stating, “Baghouses are maintained as required by other regulatory authority. Shrouds are used at the baghouse hoppers to minimize fugitive dust, and shall be maintained in good working order. Baghouses and shrouds are visually inspected daily.” Defendant shall also revise Table 5-2 by adding a column to identify the source of each BMP

**CONSENT DECREE EXHIBIT 1, cont.**

1  
2 5. In SWPPP Section 5.2, "Source Control BMPs," Defendant shall revise Table 5-2, "Best  
3 Management Practices" to include an "Outside Storage of Liquids, By-Products, or Finished  
4 Products" BMP for metals storage bins, stating: "Metals storage bins kept in areas exposed to  
5 rainfall shall be covered with an impervious material during the six-month period from October 1  
6 through March 31 each year."

7  
8  
9 6. In SWPPP Section 6.1, "Monitoring Point," (March 2007, revised June 4, 2007),  
10 Defendant shall revise the fifth sentence to state, "Aside from the unpaved area occupied by  
11 Seattle City Light's transformer, all of the facility is paved or occupied by buildings." In addition,  
12 Defendant shall revise SWPPP Section 6.1, "Monitoring Point," (March 2007, revised June 4,  
13 2007) by replacing its third paragraph with the following paragraph:  
14

15 "The two storm drain lines at the facility (located along the northern and southern sides of  
16 the foundry building) join near 13<sup>th</sup> Avenue Southwest and connect to the City stormwater  
17 system. There is currently no location at the facility where a stormwater sample can be  
18 collected after all discharge from the facility has combined. It is believed that pollutant  
19 types do not significantly vary at each catch basin. In order to determine which storm  
20 drain line is most representative of the facility's stormwater discharges, Meltec will collect  
21 a stormwater sample from one catch basin on each storm drain line during a single storm  
22 event in the Fourth Quarter of 2007, and a single storm event in the First Quarter of 2008.  
23 After comparing the monitoring data obtained in those sampling events, Meltec will  
24 identify which discharge point will be monitored thereafter."